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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/578,751   | 05/09/2006  | Manuela Javet        | 3655                | 8731             |
| 7590<br>Striker Striker & Stenby<br>103 East Neck Road<br>Huntington, NY 11743 |             |                      |                     |                  |
| 03/17/2008   |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| ELHELO, EISA B   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 1796   |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,751

**Applicant(s)**

JAVET ET AL.

**Examiner**

Eisa B. Elhilo

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 5/9/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 1-16 are pending in this application.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4 objected to because of the following informalities:

Claims 4-8 recite the term “among”. This term should be replaced with “the group consisting of”. Further, claim 4, recites the limitation “as well as a mixture of these compounds”. This limitation should be replace with “and mixture thereof.”

Appropriate correction is required to make the claims in proper forms.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 14-16 provide for the use of a combination, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 14-16 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for

example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Pratt ET al. (US 2004/0019982 A1).

Pratt et al. (US' 982 A1) teaches a dyeing composition comprising fatty alcohols such as stearyl alcohol and cetyl alcohol in the claimed amount as claimed in claims 1, 4, 14 and 15 (see page 29, paragraph, 0130), alkanolamines (alkanolamides) such as monoethanolamine in the claimed amounts as claimed in claims 1, 5, 14 and 15 (see page 24, paragraph, 0067), fatty esters in the claimed amounts as claimed in claims 1, 6-7 and 14-15 (see page 25, paragraphs, 0084-0088), anionic surfactants as claimed in claims 1, 8 and 14-15 (see page 28, paragraphs, 0115-0122) and hydrogen peroxide as oxidizing agent as claimed in claims 12-13 (see page 24, paragraph, 0068) and wherein the composition is free of monomeric ammonium compounds, cationic emulsifiers as claimed in claim 11 (see page 30, paragraphs, 0147-0150).

The instant claims differ from the reference by reciting the ratio between the dyeing ingredients in the composition.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a dyeing composition by optimizing the amounts of

the dyeing ingredients such as fatty alcohols, alkanolamides, fatty esters and anionic surfactants in the dyeing composition to arrive at the claimed invention because the reference clearly teaches and discloses these dyeing ingredients in the claimed amounts, and, thus a person of the ordinary skill in the art would be motivated to optimizing the amounts of these dyeing ingredients in the composition in order to get the maximum effective amounts of these ingredients in the composition and would expect such a composition to have similar properties to those claimed. Absent unexpected results.

### *Conclusion*

5 The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa B Elhilo/  
Primary Examiner, Art Unit 1796  
March 1, 2008